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In the Supreme Court of the State of Utah

ROBERT JACK HAUETER and
PHYLLIS HAUETER, his wife,
Plaintiffs and Appellant,

—vs.—

LIDA C. PRINCE, et al..
Defendants and Respondents

Case No.
10888

BRIEF OF APPELLANTS

Appeal from the Judgment of the Third District Court for Salt Lake County, granting the Defendant \$12,-833.65, for repairs supposedly made on Plaintiffs' property while Defendant had unlawful and illegal possession thereof.

Appeal from the Court's Judgment allowing Defendants to maintain an keep rents from Plaintiff's property from the period in which they had unlawful and illegal possession of Plaintiffs' apartment house.

Honorable Joseph G. Jeppson, Judge

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In the Supreme Court of the State of Utah

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} Case No.
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BRIEF OF APPELLANTS

RELIEF SOUGHT

Plaintiffs were entitled to possession of their apartment house without the necessity of paying the Defendant \$12,833.65 for alleged repairs supposedly made thereon during a one year period of time in which the Defendant had unlawful possession of said premises. Plaintiffs are entitled to rents collected during the time that the Defendant had unlawful and illegal possession of Plaintiff's apartment house. Interest and taxes should be abated during unlawful seizure.

STATEMENT OF FACTS

The only true parties to this action are Robert Jack Haueter and Phyllis Haueter, his wife. Plaintiffs and Lida C. Prince, Defendant. Therefore, with the Court's in-

dulgence and permission, the parties hereto will be referred to as Robert Haueter, Plaintiff, and Lida Prince, Defendant, as they were referred to in the Court below.

On the 1st day of March, 1960, Robert Jack Haueter entered into a Uniform Real Estate Contract with Lida Prince, Defendant herein, and her husband, William H. Prince, [who is since deceased, and from whom she has taken property by virtue of a joint tenancy deed]. This Uniform Real Estate Contract was for an apartment house situated at 248 West Fourth North, Salt Lake City, Utah.

The Uniform Real Estate Contract provided that the purchase price for the property was to be \$70,000.00. On this Contract, Robert Jack Haueter paid \$17,300.00 as a down payment, plus \$4,700.00 in deferred cash payments. He further paid \$475.00 per month commencing May 1, 1960, and he paid faithfully each and every month thereafter, \$475.00, until fifty two (52) payments were made, up to and including August 1964, making a total of \$24,700.00. In addition thereto, a credit of \$370.00 for the month of October, 1964, was given, making the total amount paid on the apartment house by Robert Jack Haueter, the sum of \$47,370.00, at the time it was unlawfully taken by Lida C. Prince, defendant herein. (R-265)

There is a dispute as to who was in possession of said apartment house during the months of September,

October, up to and including November 24, 1964. There is no dispute that Lida Prince did collect \$370.00, and that the Plaintiffs herein are entitled to, and were supposedly given credit herefor. (R-68, paragraph 2)

No November 24, 1964, Barrie G. McKay, Defendant's Attorney, wrote a letter to the Plaintiff in Portland, Oregon, in which he told Mr. Haueter that all rights under the Uniform Real Estate Contract had been forfeited. This was the first and only notice that the Defendant gave to the Plaintiffs to advise them that Lida Prince and William H. Prince were going to repossess and take back the apartment house. (R-264) (See letter TR-52)

On the basis of this Notice of November 24, 1964, the Trial Court Judge properly found that the Defendants herein had failed to give notice of any defaults as provided and required by the Uniform Real Estate Contract, and that they had unlawfully and illegally taken possession of said apartment house in violation of Section 78-30-2 sub-section 2, UCA 1953.

Upon taking illegal and improper possession, the Defendants immediately began pouring great expenditures of money into the repair of the apartment house, all of which is unsupported by any testimony that the repairs were necessary or that they were fair and unreasonable. (R-338)

Edward E. Westra, a well known appraiser of property in Salt Lake City, Utah, testified that he appraised said property from a market comparable approach, and from an analysis of the gross annual income and the gross potential income approach, and he was of the opinion that the property was well worth \$61,875.00.

Eli D. LeCheminant, a real estate appraiser of great experience and a man well recognized by the Court as one properly qualified to appraise property, his testimony commencing (R-224) testified that he made an exhaustive appraisal, "to find the present fair market value of the property" and he was of the opinion that the property was worth \$56,200.00, this was figured on a capitalization income approach. He also made an appraisal on the market date approach, and testified that in his opinion, the property was worth \$58,624.00. See (R-232)

The Defendants produced one witness who testified that the property was sold for \$41,000.00. This being the figure even though the Defendants herein had claimed that they put \$12,833.65 worth of repairs into the property during the year of 1965 alone, which would have placed the property's value at less than \$30,000.00. See (R-298)

This testimony was given irrespective of the fact that the Defendant's expert testified under cross-examination that they had advertised this property to the gen-

cial public for the purpose of buying stock in their White Rocks Corporation, and that the perspective had put the valuation of the property at \$50,000.00. See (R-297)

Immediately upon Lida Prince's taking unlawful possession of Robert Jack Haueter's property on November 24, 1964, the Defendant, Lida Prince, supposedly started extensive remodeling. None of the expenditures made was substantiated by any person doing the repair work; none of the expenditures was substantiated by a witness to testify that the work was necessary or that the prices charged were fair and reasonable. During the year 1965, the Defendant herein supposedly spent over \$12,833.65, for repairs on this property. (See (R-345))

All of this so-called repair work was done while this suit was pending and with full knowledge that the Plaintiff was seeking to have his property returned to him and the necessary Lis Pendens was filed.

It is further interesting to note that even though this suit was pending and Interrogatories had been submitted to Lida Prince concerning the alleged repairs, Lida Prince continued to pour large sums of money into this apartment house and, supposedly between June 3, 1965, (\$8,214.73) (R-42), and the time of the hearing of this cause, she spent an additional \$4,518.92, making the so-called total amount of repairs, \$12,833.65.

POINTS OF LAW

POINT I

The Trial Court erred in granting the Defendant a credit of \$12,833.65, for alleged repairs claimed to have been made on the apartment house during the year, 1965, while the defendant admittedly had unlawful and illegal possession of said apartment house. Said repairs were not supported by even one qualified witness who would testify to the following:

- a. that the repairs were necessary;
- b. that the repairs were actually made;
- c. that the charges were fair and reasonable.

The Court erred in permitting the Defendant to collect the rents during the period that she had unlawful possession of the Plaintiffs' property, and to offset the rents against the so-called repairs made by the Defendant.

POINT II

The Plaintiffs were entitled to triple damages during the time that the defendant was unlawfully and illegally collecting the rents and exercising control of Plaintiff's property.

POINT III

The Court erred in granting the Defendant the right to charge the Plaintiffs interest and taxes during the time that the Defendant was in unlawful possession of the Plaintiffs' property.

POINT IV

The Court erred in granting the Plaintiffs herein only sixty days in which to bring this contract current. In view of the fact that the Defendant had collected the Plaintiffs' rents for a two year period and had poured great expenditures of money into the property for repairs (none of which was substantiated), thereby permitting the Defendant to illegally and unlawfully deprive the Plaintiffs of their rights to this property.

ARGUMENTS

POINT I

The lower Court found the Defendant guilty of forcible detainer. There is no dispute that she was in unlawful possession. There is no dispute that the Defendant well knew that this lawsuit was pending at the time she supposedly spent \$12,833.65, on this property, and she did so with the sole purpose in mind that should the Plaintiff recover his property back, he would be forced to re-imburse her this high and unreasonable sum.

There is no dispute that the Defendant failed to produce one qualified witness to show:

- a. that the repairs were necessary;
- b. that the repairs were actually done;
- c. that the prices charged were fair and reasonable.

The only witness to testify was the son of Mrs. Princee who never kept the records, who had no knowledge of the work done, and who was in no way qualified to testify concerning the above requirements. This was, in effect, no proof whatsoever. See *Shupe v. Mendlove*, 41 Pac. 246; 18 Utah 2nd 130. *Mary Stevens v. First National Bk* 89 Utah, 39 C.S. Evidence Section 546, —(7d) page 257

All work was done while this suit was awaiting trial. There was a complete lack of good faith on the part of the Defendant, Mrs. Princee, since said expenditures were made with the advice of her attorneys and with a motive of expending sufficient sums of money that the Plaintiffs could not possibly raise to reimburse the Defendant, and the Plaintiffs would not be able to regain their property.

With regard to these unreasonable repairs, the Court's attention is specifically called to the expert testimony of Eli LeCheminant and Edward E. Westra, very competent appraisers in the Salt Lake area, both of which testified that these expenditures did not enhance the value of the property.

It is further interesting to note that the Plaintiff herein had faithfully paid on this property to the Defendant, Lida C. Prince, the sum of \$47,370.00, and that the true value of the property was \$61,875.00. Irregardless of this fact, the Defendant, Lida C. Prince, entered into a supposed sale in which she was to have sold this property at the ridiculous figure of \$41,000.00, all of which was done while this lawsuit was pending, all of which was done while the Lis Pendens was filed and while the Plaintiff was doing everything in his power to regain possession thereof.

POINT II

The plaintiffs were entitled to triple damages during the time that the Defendant, Lida Prince was unlawfully and illegally collecting the rents and exercising complete dominion and control of Plaintiff's property.

Sections 78-36-1 to 11, UCA 1953 specifically provide: "Every person is guilty of forcible detainer who *** during the absence of the occupants of any property, unlawfully enters thereon and after demand is made for the surrender thereof, refuses for a period of three days to surrender the same to the former occupant." There is no question that the Defendant violated this section.

It is the position of the Plaintiff that immediately upon violating this section, the Plaintiff herein became

entitled to damages in the amount of three times the rent, thus assessed.

The purpose of this statute is to prevent the very type of action which has taken place in this lawsuit. *Peterson v. Platt*, 16 Utah 2d 330, *Paxton v. Fisher*, 86 Utah 408, 45 Pac. 2d 903, and *Forester v. Cook*, 77 Utah 137, 148, 292 Pacific 206.

The Court's attention is called to the case of *Ecclus vs. Union Pacific Company*, 15 Utah 14, 48 Pacific 148 in which this Court held that the Court's refusal to treble damages awarded the plaintiff for forcible detainer was error. The Court will note in this case that rent is not in dispute. The Defendant admits that during the time that she was in unlawful possession of the property, she collected \$10,484.00. She further admitted that she had sold this property to White Rock Investment Company after supposedly putting \$12,833.65 worth of repairs into the apartment house, for the ridiculous figure of \$41,000.00. That the White Rock Investment Company has collected rent in the amount of \$4,591.11 from Jan. 1, 1966 to Oct. 1, 1966. All of this was taken unlawfully from the plaintiffs while this suit was pending.

Should the Court hold that this type of conduct is proper, then any person could take illegal and unlawful possession of another person's property, pour unreasonable amounts of money into the property, and thereby

make it impossible for the true owner to get his property back because he would be deprived not only of his rents but also he would be required to pay any unreasonable amount of money spent on the property. This scheme placed the plaintiff nearly \$15,225.94 in arrears. (See *Peterson v. Plat*, 16 Utah 2d 330.)

POINT III

The Court erred in granting the defendant the right to charge the Plaintiffs interest and taxes during the time that the Defendant was in unlawful possession of the Plaintiffs' property.

There was no evidence introduced whatsoever concerning taxes at the trial, except that of the Plaintiff, Robert J. Haueter, in which he testified that the Defendants, Prince, had stipulated and agreed under the Uniform Real Estate Contract, to add on the taxes at the end of the contract and thereby charge the Plaintiffs three-fourths of one percent.

Irrespective of this, the Court did allow and permit the Defendant, Lida C. Prince, to declare all unpaid taxes due and, there was an Order made that the Plaintiffs herein were required to pay same within sixty days.

The Court further erred in permitting the Defendant, Lida Prince, to charge the Plaintiffs interest during the

time that the defendant was in unlawful possession of the property and was collecting all of the rents and profits from the property.

It has always been the law that the person in possession must pay the taxes and that when a person takes property illegally and unlawfully, and holds this property and takes rents and profits therefrom, that person is not entitled to interest for the period of time that he is in possession.

This is the way the law should be; otherwise, a person would be rewarded by his unlawful and illegal acts.

This action is made more serious by the fact that the Court refuses to triple the damages for the period of time that the Defendant was in unlawful possession.

By charging the Plaintiffs for such taxes and interest and for the so-called repairs, even with the off-set of the rents, the Court placed the Plaintiffs in the unreasonable position of having to pay approximately \$15,225.94 to regain possession of this property. This certainly rewards the Defendant for her unlawful and illegal acts.

It would be justice if the Court would declare a moratorium, and the Court should certainly do so, for the period that the Defendant had unlawful possession, in regard to interest and taxes.

POINT IV

The Court erred in only giving the Plaintiffs herein sixty days in which to bring the Contract current.

After the court awarded the defendant reasonable repairs, the taxes and interest, the Court then allowed the Plaintiffs herein only sixty days in which to raise the approximate sum of \$18,000.00 to save this property. This amounted to a highly inequitable act and an unreasonable burden on the Plaintiffs and greatly awarded the Defendant in her malferious scheme.

The Court should have at least granted the Plaintiffs a one year period of time in which to bring these payments to date. The taxes and interest should be waived for the period that the Defendant had unlawful possession.

CONCLUSION

The Defendant herein should not be permitted any off-set by the so-called repairs that they cannot prove by good and substantial evidence.

That the Plaintiff should be awarded all rents collected during the period that the Defendant was in unlawful detainer. These rents should be tripled.

The interest and taxes should be abated during this period of time. This is the law and such should have been the result.

Respectfully submitted,

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